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APPLICATION NO	). F	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/616,535		07/09/2003	Paul G. Garcia	00004C2/RPM	1936
1933	7590	05/11/2004		EXAM	INER
	,	Z, GOODMAN &	PRINCE,	PRINCE, FRED G	
767 THIRI 25TH FLO	O AVENUE	3		ART UNIT	PAPER NUMBER
NEW YORK, NY 10017-2023			1724	THI BATTOMBER	

DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.  10616,535  CARCIA ET AL  Examiner Fred Prince 1724  Art Unit Fred Prince 1724  As HORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE Of this communication appears on the cover sheet with the correspondence address - Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. THE MAILING DATE OF THIS COMMUNICATION. If the period for reply specified above is less than this y (30) days, reply very reply and the control of the period of the period for reply specified above is less than this y (30) days, reply very thin the challenge replication of this y (30) days will be considered timely. If the period for reply specified bove is less than they (30) days, reply very reply received by the Order of the Communication. If the period for reply specified bove is less than they (30) days, reply very reply received by the Order of the Communication. If the period for reply specified bove is less than the mentity and they are all of the communication. Are yet yet reviewed by the Office laber than these mentities dater the mailing date of the communication. Are yet yet reviewed by the Office laber than these mentities dater the mailing date of this communication. Are yet yet yet yet yet yet yet yet yet ye			10.
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	3) 🔯 Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08	5) Notice of Ir	nformal Patent Application (PTO-152)

U.S. Patent and Trademark Office PTOL-326 (Rev. 1-04) Art Unit: 1724

### **DETAILED ACTION**

## Specification

1. The disclosure is objected to because of the following informalities:

The priority statement on page one of the specification must be updated to include the status of Application Serial No. 10/290,884.

Appropriate correction is required.

## **Double Patenting**

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer <u>cannot</u> overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-3 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-3 of prior U.S. Patent No. 6,555,002. This is a double patenting rejection.

### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Prince whose telephone number is (571) 272-

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Page 3

Fridays 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Blaine R. Copenheaver can be reached on (571) 272-1156. The fax phone

number for the organization where this application or proceeding is assigned is 703-

1165. The examiner can normally be reached on Monday-Thursday, 6:30-4:00; alt.

872-9306.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).